



**REMARKS**

**I. Status of the Claims**

Claims 1-24, 43-47, 56, 57, and 60-102 are pending. Claims 5-7, 11-13, and 16-22 are objected to and claims 1-4, 8-10, 14, 15, and 23-102 stand rejected.

Applicants respectfully acknowledge the Office's indication that claims 5-7, 11-13, and 16-22 would be allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims. However, Applicants choose not to rewrite the allowable claims in independent form at this time.

**II. Rejections under 35 U.S.C. § 103(a)**

**A. Claims 1-3, 25-44, and 60-102 in view of Cottard**

The Office maintains the rejection of claims 1-3, 25-44, and 60-102 under 35 U.S.C. § 103(a) for allegedly "being unpatentable over" U.S. Patent Application Publication No. 2001/0023515 A1 to Cottard et al. ("Cottard") for the reasons set forth in the Office Action dated October 28, 2005 and the additional reasons set forth on pages 2-4 of the Final Office Action. Applicants respectfully disagree and continue to traverse the rejection for reasons of record and the following additional reasons.

In the Final Office Action, the Office repeats the assertion of record that the presently claimed weight ratio between the at least one aminosilicone and the at least one associative polymer would have been obvious. See Final Office Action at pages 2-4. Specifically, the Office alleges that Cottard teaches a dyeing composition comprising oxidation dyes, cationic thickening polymers as claimed, in the amount of 0.01 to 10%,

and “effective quantities of other agents . . . known for oxidation coloring and organomodified silicones are among these agents.” *Id.* at page 3. The Office concludes on this basis only that “there is a clear suggestion and sufficient motivation to one having ordinary skill in the art to be motivated to optimize the weight ratio of the aminosilicone to the cationic associative polymers to arrive at the present invention.” *Id.*

Applicants continue to disagree with the position of the Office. In order to establish a *prima facie* case of obviousness, the Office must meet three basic criteria. Among these are the requirement that the cited reference or references must teach or suggest all of the claim limitations, and the requirement that the Office must demonstrate that there would have been some suggestion or motivation, either in the cited reference or in the knowledge generally available to one of ordinary skill in the art, to modify the reference teachings. See M.P.E.P. § 2143. Despite its assertions to the contrary, the Office has not met either of these criteria in the present case.

In particular, the position of the Office that the presently claimed aminosilicone/associative polymer weight ratio would have been obvious based on the single mention in Cottard of organomodified silicones as optional “other agents” is unreasonable. This is hardly an acceptable basis for an assertion of “clear suggestion and sufficient motivation.” Instead, the law requires the Office to provide more than the “mere identification” in the prior art “of individual components of the claimed limitations” for an obviousness rejection. *In re Kotzab*, 217 F.3d 1365, 1371 (Fed. Cir. 2000). “Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.” *Id.*

In *Kotzab*, where there was an obviousness rejection based on a single reference, the Federal Circuit stated that “identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention,” rather, there must be “a showing of a suggestion or motivation to modify the teachings of that reference.” *Id.* at 1370. The court looked to the Examiner’s reasons for finding that a particular sensor limitation was taught or suggested in the prior art, concluding that the Examiner relied on an “unstated premise” that a sensor was equal to a system, and there was insufficient evidence to extrapolate the teaching of the prior art to the claimed limitation, stating that “the Examiner and the Board fell into the hindsight trap.” *Id.* at 1370-71.

Here too, the Office is attempting to find all of the claim elements in a single prior art reference, but has merely identified individual components of the claimed limitations, which necessitated extrapolating from the very general teaching of “organomodified (such as by amine groups) silicones” in a broad list of “other agents” in Cottard to the claimed limitation of “at least one aminosilicone” and extrapolating even further to devise the claimed ratio of “the weight ratio of the at least one aminosilicone to the at least one associative polymer is greater than or equal to 1.” Here, as in *Kotzab*, the Office has fallen into the “hindsight trap” because there is “no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of [the] invention to make the combination in the manner claimed.” *Id.* at 1371. Thus, the Office has failed to establish a *prima facie* case of obviousness.

Further, as argued of record, Cottard does not teach or suggest all claim limitations as required by M.P.E.P. § 2143. “**All words** in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03 (citations omitted) (emphasis added). Claim 1 recites, in relevant part, that “the weight ratio of the at least one aminosilicone to the at least one associative polymer is greater than or equal to 1.” See, e.g., claim 1. These elements, the at least one aminosilicone and its weight ratio with the at least one associative polymer, are recited in all of the present independent and dependent claims, and are demonstrated in a non-limiting manner in the Example of the specification. These elements are not taught or suggested by Cottard.

In *Upjohn Co. v. Mova Pharm. Corp.*, where there was prior art teaching an ingredient amount, the Federal Circuit considered and found non-obvious patent claims reciting specific amounts of components. 225 F.3d 1306 (Fed. Cir. 2000). Specifically, a patent claim reciting a composition with a range of spray-dried lactose in a range of “about not less than seventy percent (70%) by weight of the final composition” was deemed patentable over the prior art teaching of a formulation with 56.4% spray-dried lactose. 225 F.3d at 1310.

Here, in contrast, there is no teaching of the claim limitation of the weight ratio of the at least one aminosilicone to the at least one associative polymer in Cottard, a fact that the Office has admitted. Office Action dated October 28, 2005 at 3. Indeed, Cottard can hardly be said to teach or suggest the claimed aminosilicone compounds as Cottard merely mentions “organomodified (such as by amine groups) silicones” in a broad and general list of “other agents” which the composition of Cottard may further

optionally comprise. Cottard at page 17, paragraph [0337]. It is “impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious” since the “mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.” *In re John R. Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992).

As Applicants pointed out in the previous response, there is no teaching in Cottard that the ratio weight ratio between aminosilicone compounds and associative polymers is a “result-effective parameter” as is required by M.P.E.P. § 2144.05 . (“A particular parameter must first be recognized as a result-effective variable . . . before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation.”). M.P.E.P. §2144.05(II)(B). In contrast, and contrary to the Office’s contention otherwise, the present disclosure does make it clear that the weight ratio between aminosilicone compounds and associative polymers is a result-effective parameter, as evidenced by the ratio being taught throughout the specification and claims as-filed.

Finally, the fact that Cottard teaches associative polymers is not relevant to the present claims, which recite only specific cationic associative polymers. Cottard teaches that anionic, nonionic, and cationic thickeners may be used, without any teaching that would motivate one of ordinary skill in the art to select one type of thickener over the other. In order to make a *prima facie* case of obviousness, such a suggestion or motivation “must be found in the prior art reference, not in the Applicant’s

disclosure.” *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991).

No such motivation or suggestion is present in Cottard.

Accordingly, for at least the reasons above, the Office has not made a *prima facie* case of obviousness with respect to claims 1-3, 43-44, and 60-102 in view of Cottard.

**B. Claims 4, 8-10, 14, 15, 23, and 24 in view of Cottard and Legrand**

The Office continues to reject claims 4, 8-10, 14, 15, 23, and 24 under 35 U.S.C. § 103(a) for allegedly “being unpatentable over” Cottard in view of U.S. Patent Application Publication No. 2003/0140429 A1 to Legrand et al. (“Legrand”). Office Action at 2. Applicants respectfully disagree and continue to traverse the rejection for reasons of record and the following additional reasons.

Cottard does not teach or suggest aminosilicone polymers chosen from aminosilicones of formulae (I), (II), and (III) as claimed. The Office cites Legrand to attempt to cure this deficiency. However, as discussed above, the Office has failed to show that Cottard teaches or suggests all the limitations of the base independent claims as required under M.P.E.P. § 2143. Legrand does not cure the deficiencies of Cottard with respect to independent claim 1, and thus does not cure the deficiencies of Cottard with respect to claims 4, 8-10, 14-15, and 23-24.

As a result, the Office has not shown and cannot show that the cited references provide the requisite motivation for one of ordinary skill in the art, with no knowledge of the claimed invention, to create a composition comprising at least one oxidation dye, at least one cationic associative polymer chosen from three specific types, as claimed, and at least one aminosilicone, wherein the weight ratio of the at least one aminosilicone to the at least one associative polymer is greater than or equal to 1, as is presently

claimed. See, e.g., claim 1. Further, one of ordinary skill in the art would not expect such a composition to lead to the improved physiochemical stability and improved coloration selectivity of the present invention. See specification as-filed at page 2, paragraphs [007]-[009].

Accordingly, for at least the reasons above, the Office has not made a *prima facie* case of obviousness with respect to claims 4, 8-10, 14-15, and 23-24 in view of Cottard and Legrand.

**C. Claims 45-47, 56, and 57 in view of Cottard and Laurent**

The Office continues to reject claims 45-59 under 35 U.S.C. § 103(a) for allegedly “being unpatentable over” Cottard in view of U.S. Patent Application Publication No. 2002/0046431 A1 to Laurent et al. (“Laurent”). Final Office Action at 2. Applicants respectfully disagree and continue to traverse the rejection.

Cottard does not teach or suggest the claimed cationic associative polyurethane polymers. The Office cites Laurent for its teaching of cationic polyurethanes allegedly similar to the claimed cationic polyurethanes and concludes that one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Cottard by incorporating the cationic polyurethane polymers of Laurent.

Here too, the Office has not shown and cannot show that the cited references provide the requisite motivation for one of ordinary skill in the art, with no knowledge of the claimed invention, to create a composition comprising at least one oxidation dye, at least one cationic associative polymer chosen from three specific types, as claimed, and at least one aminosilicone, wherein the weight ratio of the at least one aminosilicone to the at least one associative polymer is greater than or equal to 1, as is presently

claimed. See, e.g., claim 1. Further, one of ordinary skill in the art would not expect such a composition to lead to the improved physiochemical stability and improved coloration selectivity of the present invention. See specification as-filed at page 2, paragraphs [007]-[009].

Accordingly, for at least the reasons above, the Office has not made a *prima facie* case of obviousness with respect to claims 45-47 and 56-57 in view of Cottard and Laurent.

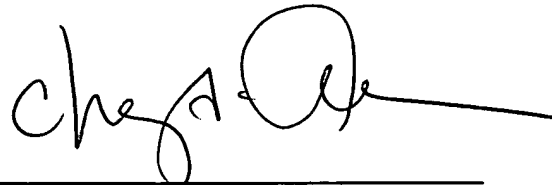
### III. Conclusion

In view of the foregoing remarks, Applicants submit that the claimed invention is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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